

COUNCIL POLICY**CURRENT**

SUBJECT: DISPOSITION OF CITY-OWNED REAL PROPERTY
POLICY NO.: 700-10
EFFECTIVE DATE: March 1, 2005

BACKGROUND:

The City of San Diego is owner of substantial real property which is used for various municipal purposes. As public service needs change, the requirements for these properties may be revised and, on occasion, certain parcels may be in excess of the City's current need. This requires that the site be reviewed in terms of its potential for future public use, as well as its potential economic benefit to the City.

The proceeds from the sale of City-owned lands are utilized for Capital Improvements Program projects, as required by the City Charter, Section 77, and the revenues generated from leases are normally utilized for General Fund purposes.

PURPOSE:

It is the purpose of this policy 1) to establish a procedure by which unused and marginally used City-owned real estate is reviewed for its potential public use, and for designating unneeded parcels for lease or sale; 2) to provide guidance for the auction, negotiated sale, or exchange of City-owned real estate; and 3) to establish the conditions under which City-owned real property may be leased.

POLICY:

It is the City's policy to manage its real estate assets so that municipal needs which rely on these assets may be properly implemented. It is not the City's policy to speculate in real estate. The City Council will review all City-owned real estate not adequately used for municipal purposes and determine the appropriate use of the property. Those properties needed for municipal purposes may be so designated. If a property is not needed for public use within the foreseeable future, it may be made available for lease or sale, or if it will be needed at a future time, it may be suitable for lease in the interim. Those properties not required for municipal use or designated for lease may be designated for sale.

The City shall optimize the sale price or lease rent from City-owned real estate based on relevant factors, including 1) an appraisal of the property which is no more than six months old at the time the transaction is presented to the City Council or one of its committees, 2) prevailing economic conditions and recent applicable trends, and 3) any special benefits to accrue from the sale or lease.

Discounts will not be negotiated unless an extraordinary need or circumstance is recognized by Council Resolution prior to negotiation, setting forth the amount of the discount and the justification for it.

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Since it is generally not in the City's best interest for a property transaction to be negotiated in open session, the City Council shall either approve, disapprove, or return to the City Manager for further negotiation or study, any recommendation regarding the disposition of City property.

PROCEDURE:

A. Real Estate Review

All unused and marginally used City-owned real estate will be reviewed on a continuing basis to determine public facility needs and General Plan element support needs on a timely basis. The following procedure shall apply:

1. Review by appropriate City departments and other governmental agencies.
2. Review by the Subdivision Review Committee.
3. Review by the Planning Commission for consistency with the General Plan.
4. The City Manager's recommendation and relevant comments are submitted to the Public Facilities and Recreation Committee.
5. Public Facilities and Recreation Committee recommends the designation of the property and any related actions to the Council.
6. The City Council then determines the designation to be applied to the property, i.e., public facility, open space, sale or lease (see Section B.).

B. Lease Versus Sale

City-owned real property not required for municipal uses will be designated for lease or sale using criteria listed below. At the time staff recommends whether the property should be sold or leased, Council shall be provided with an appropriate analysis of the alternatives.

1. **Criteria for Sales.** Property shall be sold when:
 - a. The sale of a property will provide revenues necessary for public facilities which are unfundable through other revenue sources.
 - b. The property is unleaseable because of location, access, topography, or other considerations.
 - c. The sale would enhance the City's position relative to other activities, such as economic development efforts.
 - d. The sale would maximize the total economic return to the City.

2. Criteria for Lease. Property shall be leased when:
 - a. The land can only be leased because of legal restraints, such as tideland grants, airports, dedicated parks, agricultural preserves, open space watershed or floodplains.
 - b. The property is now needed, or may be needed in the future, to provide the City with a site for public facilities, or unusual services not otherwise obtainable.
 - c. The property is in an area of uncertain future development and can be leased as an interim measure until future public needs or land use designations can be determined.
 - d. The City requires substantial control over development, use and reuse of the property.
 - e. The property has the immediate potential of a high return to the City because of its high demand and type of use, such as commercial and industrial lands.
3. Industrial Properties. Generally, City-owned industrial properties will be used to facilitate increased employment and otherwise enhance the local economy. Sale or lease of such property will be in accordance with Council Policy 900-3, Disposition of City-owned Industrial Property.

C. Sale of Real Estate

1. Auction. City property designated for sale shall generally be offered by public auction unless the parcel meets the criteria for a negotiated transaction as hereinafter set out in 3 below. Public auction sales shall be conducted in accordance with Municipal Code Section 22.0902.1, Sales of Real Property - Requirements for Sale at Auction. City Council reserves the right to reject any and all bids. The minimum acceptable bid will usually be set by qualified staff after considering readily available information. The intent of this procedure is to efficiently set a minimum bid which will insure a fair return to the City for its property, while encouraging maximum participation in the bidding process.
2. Term Payments. The Manager may offer term payment plans on properties to be sold in order to stimulate interest in the property. Term payment plans shall insure that the city obtains an appropriate rate of return on the unpaid balance. The Manager will have the authority to vary the terms and interest rates, as appropriate, to reflect current market conditions or other special needs.

3. Negotiated Sales. Negotiated transactions shall comply with the requirements of Municipal Code Sections, as applicable, and may be approved under one of the following conditions:
 - a. When a parcel is landlocked.
 - b. When the sale to a contiguous owner would correct a site deficiency.
 - c. When a fee interest in a pipeline or other right-of-way is no longer required, it may be sold to a contiguous owner. A restrictive pipeline easement of adequate width or other required easements will be reserved from said sale.
 - d. When other governmental, public and quasi-public agencies submit acquisition proposals, a sale may be consummated per Municipal Code Section 22.0907, Sales of Real Properties to Public Agencies. These agencies shall include but not be limited to: Federal, State, and County agencies; school districts, special districts, and regulated utility companies.
 - e. When qualified nonprofit institutional organizations offer to purchase City-owned land, a negotiated sale may be consummated at fair market value providing there is 1) a development commitment, and 2) a right to repurchase or a reversion upon a condition subsequent. Institutional organizations such as churches, hospitals, extended care facilities, private schools and community service organizations are required to develop under the City's conditional use permit procedure.
 - f. When a property has been offered by public auction and no acceptable bids were received, it may be sold on a negotiated basis to any applicant submitting an acceptable offer within six months following the date of auction.
 - g. Real property exchanges may be consummated by direct negotiation per Municipal Code Section 22.0902.2, Exchanges of Real Property. However, exchanges will be considered only with other governmental agencies or when there is an advantage to the City.
4. Rezoning. Prior to completion of the sales transactions, City land(s) shall be rezoned in accordance with the General Plan, existing community plans or other City Council direction. Also, all unnecessary easements affecting title to the property shall be removed.
5. Easements. The City will receive current fair market value for the removal of restrictive easement(s) or access rights previously paid for by the City or other governmental agency or reserved in a sale of City property.

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D. Leasing.

1. Rate of Return. The City shall obtain a fair market rate of return on City-owned property being considered for lease and negotiate terms and conditions which will continue to sustain a fair rate of return through rent review, consumer price index adjustments, reappraisals or the application of percentage rents to gross income. The rate of return shall be based upon the highest rate commensurate with the highest and best use of the property, or a fair rate of return commensurate with the designated public use.
2. Rental Terms. Rental terms may be negotiated on the basis of fixed rates, percentages of gross income or combinations thereof, whichever is commensurate with the market place.
3. Minimum Rent. Percentage leases will provide a minimum rent which shall be adjusted at appropriate intervals which shall be no more than every five years to reflect 80 percent of the average annual rent actually paid during the preceding interval. In no event shall the adjusted minimum rent be less than the minimum rent in existences preceding the adjustment.
4. Long-term Lease. A lease in excess of three (3) years requires Council approval by Resolution. However, leases for wireless communication facilities for a term of up to ten (10) years may be executed by the City Manager.
5. Short-term Lease. Unless there are special circumstances, a lease term of three (3) years or less may be executed by the City Manager without Council Resolution. A short-term lease may not be renewed without Council Resolution. Council will be notified of a short-term lease, not later than 15 days following its execution.
6. Selection of Lessee. Leasehold proposals shall be evaluated essentially in terms of:
 - a. Consideration offered in the form of rent.
 - b. Financial capability.
 - c. Expertise regarding the proposed leasehold development and operation.
 - d. Nature of proposed development.
 - e. Special public benefits to be derived (if any).
7. Leasehold Assignments. Requests for assignment of leasehold interest shall be evaluated on the same basis as the criteria used in evaluating a leasehold proposal. The City Manager may authorize assignments which do not require amendment of the master lease provisions.

8. Subleases. Requests for sublease approval will be considered on the merits of each individual transaction. No sublease shall be approved which would be detrimental to the City's rights under the master lease. The City Manager may authorize subleases which meet this condition and which do not require amendment of the master lease. The percentage rental rate shall be a minimum of fifty percent of the gross revenues from subleases for wireless communication facilities.
9. Amendments. Amendments of long-term leases require Council authorization. Whenever there is a substantial amendment, the City Manager shall provide an indication of the fair return for the leasehold. This can be accomplished by appraisals, a survey of the market rate of return, a combination of the above, or any other relevant information.
10. Updating Lease Terms. Lease terms shall be updated as much as practicable whenever there is a request for assignment, or significant amendments or subleases are proposed.
11. Financial Encumbrances. The City will generally not subordinate its fee interest to encumbrances placed against the leasehold by the lessee. The City Manager may approve appropriate financial encumbrances of the leasehold interest which provide that all loan proceeds are used for authorized improvement of the premises. Loans or refinancing in the form of encumbrances against the lease for the purpose of reducing equity or financing the sale of leasehold interest will not be allowed until the property is fully developed for uses authorized in the lease. After the property is developed, such financing may be permitted so long as there is also substantial benefit to be gained by the City. When encumbrances are made against a leasehold for its development, City staff shall take appropriate steps to insure that the proceeds go into the leasehold. It is recognized that the steps will depend upon the circumstances of the case and limitations on staff resources.
12. Improvements. Lease improvements installed by the lessee will be removed at termination without cost to the City, or will revert to the City, at the City's option. All leasehold improvements and alterations require prior approval by the City Manager.
13. Lease Term. Lease term will be limited to the shortest practical time commensurate with the amount of capital investment in permanent improvements to be made by the lessee.
14. Audits. All percentage leases shall be audited by the City Auditor and Comptroller in the first year of operation to establish proper reporting procedures and at least once every three years thereafter. More frequent audits may be made if appropriate. The City shall reserve the right to audit all other leases and agreements if determined warranted by the City Auditor and Comptroller.

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15. Site Access Fee for Wireless Communication Facilities. A onetime site access fee shall be charged for all wireless communication facilities except within the City's Right of Way. The base fee for 2004 is Forty Thousand Dollars (\$40,000), and shall be increased on January 1 of each year corresponding to consumer price index. Renewal of existing leases or subleases for which a site access fee has not been paid shall be conditioned upon payment of one half of the site access fee.
- E. Marketing.
Competitive offers for lease or sale shall be solicited from the open market place. This may be accomplished through a number of marketing techniques, such as requests for proposals (RFPs), a marketing subscription system, direct advertising, exposure through the real estate media, such as the multiple listing service, posting the property and any other appropriate means. Lands designated for industrial and scientific research uses shall be marketed in accordance with Council Policy 900-03.
- F. Real Estate Broker's Fee.
The City will normally pay a real estate brokerage fee for qualified representation of a selected lessee or purchaser of City property. When the amount of rental or purchase price offered are criteria for selecting a lessee or purchaser in competitive situations, the selection will be based on the highest net rental or net purchase price, taking into account any brokerage fees involved in the competition. All brokerage participation and brokerage fees shall comply with Municipal Code Section 22.0905, Broker's Fee and Registration.
- G. Priority Handling.
Since time is of essence in land transactions, all such actions by Council and Committee shall be given the highest priority and special handling. Such action which must first go before a Council Committee will be placed on an early portion of the Committee agenda in order to assure prompt action. Subsequent to the Committee action, the item shall be placed on the docket of the next regular City Council meeting as a Supplemental Item.
- H. Public Utilities Installed by Private Entities.
The applicant for the use of unimproved City land for public purposes, such as streets, sewers, and other public utilities, shall compensate the City for the fair market value of the rights to be granted by the City. The amount of compensation shall be established by appraisal. However, lands which have been conveyed to the City after July 18, 1983, by private entities shall at the option of the grantor carry a reservation to the grantor for a period of 10 years following the date of conveyance to the City which would permit the grantor to install public utilities serving the grantor's adjacent land without the payment of compensation to the City therefor, and provided further that such installations shall not adversely affect any prospective use of the City's property. Persons who grant property to the City without charge shall have an automatic right to have such public service easements set aside on the donated property in the above manner.

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CROSS REFERENCE:

Council Policy 700-04
Council Policy 700-09
Council Policy 700-11
Council Policy 700-12
Council Policy 700-41
Council Policy 700-06
Council Policy 600-43
Council Policy 900-03

HISTORY:

“Assignment and/or Subletting of City Leases”
Adopted by Resolution R-169946 03/15/1962

Retitled to “Disposition of Surplus
City-Owned Real Property” and
Amended by Resolution R-208091 06/05/1973
Amended by Resolution R-212957 04/04/1975
Amended by Resolution R-217309 12/21/1976
Amended by Resolution R-218125 04/12/1977
Amended by Resolution R-219507 10/19/1977
Amended by Resolution R-220842 05/09/1978
Amended by Resolution R-224022 07/16/1979
Amended by Resolution R-250319 10/01/1979
Amended by Resolution R-251154 02/11/1980
Amended by Resolution R-251943 06/02/1980
Amended by Resolution R-252266 07/14/1980
Amended by Resolution R-252313 07/21/1980
Amended by Resolution R-252966 10/27/1980
Amended by Resolution R-255014 09/15/1981
Amended by Resolution R-258160 03/28/1983
Amended by Resolution R-258896 07/18/1983
Amended by Resolution R-300187 03/01/2005